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Supreme Court, U.S.
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No. 03-1357

In The
SUPREME COURT OF THE UNITED STATES

GERALD D. BUSH
CAROLYN BUSH
Petitioners,

v

ZEELAND, MICHIGAN
Respondent.

Pro se Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

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MOTION FOR REHEARING OF PETTION FOR WRIT OF CERTIORARI

By:

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June 25, 2004

REVISED QUESTIONS

In this case a heightened standard was imposed for extension of time for service, extension was requested based on "good cause," but denied and the case dismissed. Service was not completed and Defendant never filed an appearance, answer or brief. On appeal by right, the court of appeals willfully refused to address the questions and briefed issues.

1. Whether the speech of *pro se* Petitioners on appeal by right was effectively censored by not providing the appeal to which they were entitled - by refusing to address their questions?

2. Whether the deliberately censored speech of *pro se* litigants on appeal by right is as important for the Court to decide as that of "adult businesses" resulting in splits between the circuits, and, if not, why not?

3. Whether service on opposing party who has not been served and has not appeared in lower courts is required?

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REHEARING OF PETITION FOR WRIT OF CERTIORARI

Petitioners move for rehearing of their writ of certiorari seeking review of the (their censored appeal) totally inadequate and unjust decisions of the 6th Circuit Court of Appeals and the decisions of the District Court of the Western District of Michigan. Petitioners believe they did not receive the appeal to which they are entitled by the Constitution, laws and court decisions and that the intent has been to suppress their Speech, which supposedly is protected by the First Amendment, and other supposedly "protected" rights.

JURISDICTION

Petitioners rely in part upon their jurisdiction statement in the Petition. The petition was denied on June 1, 2004. The motion is timely if mailed via U.S. Postal Service within 25 days. Rule 29, 44. However, if since it is due on a Sat. June 26, 2004, it is timely if mailed on Monday, June 28, 2004. 28 USC 2107 and Rule 30(1) apply.

CONSTITUTION, LAWS, & RULES INVOLVED

First Amendment

"Congress (and the courts?) shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for redress of grievances."

FRCP Rule 4(m) Time Limit for Service

"If service of the summons and complaint is not made upon a defendant within 120 days after filing of the complaint, the court, upon motion, or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; *provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.*" (emphasis added. Balance not relevant.)

FRAP Rule 3 Appeal As of Right - How Taken
Rule 3(c)(2) "A *pro se* notice of appeal is considered filed on behalf of the signer *and the signer's spouse* and minor children (if they are parties), unless the notice clearly indicates otherwise." (emphasis added)

SUMMARY OF THE CASE

This case was deliberately obstructed from being decided on the merits by the district court and court of appeals, but at its heart this is a property rights case. Respondent has created oppressive zoning and other ordinances that evade fair and just review and it unequally and selectively enforces them. The record reveals the Respondent and its agents have long been attempting to force the Bushs out of town because they have dared to fight city hall in court and demonstrate their multiple violations of law and Constitution. (See ***Doe v Miller***, 289 F Supp 2d 844 (DC IA, 2004) penalty of banishment from community is unconstitutional; See Pet. 5a, Plaintiffs' Affidavit (Aff.) at #6, 7, 25.)

As part of its plan of action Respondent has repeatedly prosecuted Petitioners for violation of its unconstitutional zoning ordinances, etc. and their biased state judges have always ruled in their favor and/or obstructed justice, even though an unpublished Michigan Court of Appeals case found such ordinances unconstitutional. (***Flint v Bibbs***, #52759 (1982); See Pet. Aff. at 6a, #9) Respondent and Michigan judges pay ***Bibbs*** and other authority no heed. (See ***Michigan v Defillippo***, 443 US 31, 41 (1979) J. Blackmum concurring - "the ordinance itself could *perpetually evade constitutional review*." emphasis added) The Bushs count these malicious prosecutions as bad faith, harassment and conspiracy with biased pro government state judges, evading controlling precedent they do not personally like.

After many such prosecutions, Respondent stole hundreds of items of the Bushs personal property stored outside of buildings under guise of zoning and a civil nuisance suit in conspiracy with another complicit state judge. Their appeals were obstructed by other state judges and officials. (See Pet. Aff. 6a-8a)

This civil rights suit was intended to enforce rights under the Constitution and recover for Respondent's theft of hundreds of items of personal property of the Bushs unlawfully seized on August 9, 1999. (See Pet. App. A at 1a) However, the federal district judge objected to Petitioners' inditing affidavit (speech), as demonstrated by his refusal to recite it, is biased in Respondents favor and against nonattorneys and ruled accordingly. So also is the Court of Appeals, except it also favors the district judge over these nonattorney dumbbells.

The Bushs were being harassed during the 120 days for service and especially in the last 20 days of the time to serve. (See Pet. Aff. at 8a-9a) The district court denied their motion to extend time and dismissed the suit and denied reconsideration. (Pet. App. D 10a, E 14a, F 15a)

Respondent's second alleged nuisance suit and illegally gotten order (after removal, See Pet. Aff at 8a) resulted in the theft of more of Petitioners' property in 2003, the trumped up arrest and assault of Mrs. Bush on felony charges, the assault of Mr. Bush, the destruction of one of their houses, the loss of control of another, and large unnecessary and unjustified expenses. (See Pet. p 11-13)

1. THE IMPORTANT QUESTION OF WHETHER THE NONATTORNEY APPELLANTS' SPEECH WAS CENSORED ON APPEAL BY RIGHT, IN VIOLATION OF THE FIRST AMENDMENT AND OTHER RIGHTS, SHOULD BE DECIDED BY THIS COURT.

This Court has just decided a First Amendment case involving the rights of "adult" businesses, of which it has

decided many cases. (See *Littleton, Col. v Z.J. Gifts*, O2-1609 (June 7, 2004) and cases cited.) However, it has not decided the First Amendment rights of any nonattorney *pro se* litigant that Petitioner is aware of. The time and case are ripe. A comparison between the rights of "adult businesses" and *pro se* litigants would be enlightening.

In ***Littleton***, this Court decided the case because of "lower court uncertainty on this issue" and listed 7 cases. (Part I) But how many can it list involving the First Amendment rights of *pro se* (meaning here nonattorney, in other words the poorest of litigants) litigants?

In Littleton, Z.J. Gifts, (and other adult businesses) have protected First Amendment "*safeguards designed to obviate the dangers of a censorship system.*" ***Littleton***, quoting ***Freedman*** (Part II (A) (emphasis added). (Obviously cities, states and Congress may not censor speech, but what about judges?) Three safeguards are then listed. Number 2 is "burden of proof rules favoring speech" and #3 "a `procedure' that will `*assure a prompt final judicial decision*, to minimize the deterrent effect of an interim and possibly erroneous denial of a license." Id., at 58-59 (***Littleton*** court emphasis).

(It is presumed by Petitioners that the Court meant the "prompt final judicial decision" is *on the merits*, not some evasive procedural issue.)

This case involves a "final judicial decision" on appeal, *but not on the merits* of the issues raised by questions and briefing. And it was no error. Therefore, Petitioners believe the court of appeals censored their First Amendment and other Constitutional Rights. (Due Process, Equal Protection, Privilege of appeal, and Justice.)

The evidence of that the Court will soon see for itself. Following this discussion are the questions that were raised and briefed. But as the Court can see from comparing them to the 6th Circuit opinion, they were all ignored and a decision entered reflecting the courts will, not the law or Constitution. (Mr. Bush has found this to be a common practice.)

Littleton speaks of the "*unconstitutional suppression of protected speech.*" (Part II A); And "In our view, Colorado's ordinary judicial review procedures suffice *as long as the courts remain sensitive to the need to prevent First Amendment harms . .*" (Part II B); "There is *no evidence before us of any special Colorado court-related problem* in this respect. And were there some problems, *federal remedies would provide an additional safety valve.* See Rev. Stat. Sec 1979, 42 USC sec 1983."; "denial (of decision on the merits in this case) meant complete censorship."; "using their judicial power *to prevent significant harm to First Amendment interests . .* " (Part II B)

The question Petitioners ask is whether this Court is willing to follow the above standard when, as here, the 6th Circuit clearly censors the First Amendment rights of *pro se* appellants - Petitioners?

In ***Legal Services Corp. v Velazquez***, 531 US 533, 149 L Ed 2d 63, 121 S Ct 1043 (2001) this Court overruled an act by Congrsss on First Amendment grounds holding that it had insulated from judicial review certain types of cases, arguments and speech by attorneys. Do the same standards and safeguards apply to courts who censor speech?

The "evidence" of censorship follows. The following few questions were raised as numbered, argued and briefed in the Petitioners' appeal by right to the Court of Appeals, but never addressed, or decided. Therefore, the Petitioners were denied the appeal by right to which they are entitled. See ***Adkins v E.I.Dupont***, 335 US 331, 69 S Ct 85; 93 L Ed 43 (1948) holding that a poor appellant is "entitled" to "appellate review of the issues the district court decided against her . . " Anything less ". . would frustrate the basic purpose of the statute." (US at 340). See also ***Bounds v Smith***, 430 US 817, 822 (1977). (Note: Mr. Bush has had many appeals *pro se* where he has been censored and denied the Due Process review and decisions to which he has been entitled. Of these, few could be errors, but are rather willful obstruction of justice, as he believes is evident here.)

Questions

*1. Whether district court must accept at face value and as true affidavits provided by the Plaintiffs in support of extension of time and injunction that contain a many year history of substantial and continual bad faith, wrongs and constitutional violations and history of inability to find justice in state courts? (See Appellants' Brief at p 10-15)

*2. Whether the district court erred by refusing to extend time for service of this *pro se* civil rights case and by dismissal of the case? (See Appellants' Brief at p 15-18)

*3. Whether the district court erred calculating the time available to file a motion to extend time to serve Defendants? (See Appellants' Brief at p 15-16)

*4. Whether the District Court erred imposing a heightened and excessively restrictive standard for extension of time on *pro se* plaintiffs exceeding the requirements of Rule 4(m) and therefore being unjust in violation of Rule 1, Due Process and Equal Protection rights and 28 USC 1654? (See Appellants' Brief at p 16-17)

*5. Whether removal was reasonably appropriate under the statutes as understood by the *pro se* plaintiffs and was erroneously remanded when record is properly viewed? (See Appellants' Brief at p 18-20)

*6. Whether state court judgment is void because made after removal, in absence of jurisdiction; in violation of federal law; in violation of Supreme Court precedents; in violation of the Supremacy Clause? (See Appellants' Brief at p 20-22)

*7. Whether *pro se* plaintiffs had a right to have district court ruling and ruling in their favor on their motion for injunctive relief? (See Appellants' Brief at p 18-22)

*8. Whether rulings, absence of rulings and comments of the district [court] in light of the record and this appeal reveal bias favoring government Defendant and opposing *pro se* plaintiffs, and if so, whether remand to a different unbiased court is required? (See Appellants' Brief at p 22-24)

*9. Whether there is any federal forum and relief from unethical state government attorneys for *pro se* litigants when the state will not provide any? (See Appellants' Brief at p 24-28)

By simply reviewing the short court of appeals decision it should be very clear to the Court that the questions marked by (*) were not answered. (See court of appeals decision at Pet. App. 17a-21a). Furthermore, since the disposition of the case does not track with the issues raised or even recite relevant facts, it seems evident that it is a decision based on judicial "will" instead of facts and law. Indeed, the appeals court decision follows the district court decisions like a dog on a leash.

Next, on Motion for Rehearing, Petitioners raised the following few questions, and likewise, argued and briefed them, but rehearing was denied.

1. Whether the district court had subject matter jurisdiction [of the removed state case] appears vague, arbitrary, and capricious and therefore violates the First Amendment and Due Process of law?

2. Whether the 6th Cir. panel erred ~~in~~ by not accepting as truthful all the allegations and affidavits of the plaintiff-appellants in the record on appeal,

since there was no motion to dismiss because Defendants never made an appearance and because the judge dismissed *sua sponte*?

It is absolutely clear that none of these questions were answered by the court of appeals, since they did not rehear the case. See Pet. App. 22a.

Furthermore, Appellants wonder if the record was ever sent to the court of appeals. (*Pro se* appellants have no way to assure that the record is sent before their cases have a decision.)

If this Court has any doubts about this federal judge's intent to censor *pro se* speech, the Court should review ***Bush v Zeeland Bd of Educ.***, 1:01-CV-672 (W.D. Mich 2003) 2003 U.S. Dist. 3788 and see the extreme, horrific and unjustified sanctions imposed upon Mr. Bush solely for being involved in state and federal lawsuits attempting to protect his and others Constitutional rights *pro se*.

The bottom line is Petitioners would like this Court to provide the judicial "determination" for them, as it described the rights in ***Littleton*** for the First Amendment Speech rights of "adult businesses" above.

CONCLUSION

Now this Court must decide if nonattorney appellants are entitled to one fair, just , uncensored appeal by right. Petitioners would remind the Court of the truthful statement of Chief Justice Burger:

> "The *potential danger to the citizenry* from the malice of thousands of prosecutors and judges is at once more pervasive and less open to constant, public scrutiny than the actions of a President." ***Nixon v Fitzgerald***, 457 US 731, 759 (1982) Fn 2, (Chief Justice Burger concurring). (emphasis added)

(See sworn statement of Mr. Bush. p 9)

For the above reasons, Petitioners respectfully request that this Motion for Rehearing of their Petition for Writ of Certiorari be granted and their rights "safeguarded" by the Constitution be enforced. (***Littleton, supra.***)

June 25, 2004

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Carolyn Bush

Statement According To 28 USC 1746

Based on evidence in my cases, information and belief, I am convinced beyond a reasonable doubt that the vast majority of the state and federal judges I have had cases with deliberately censor my speech, obstruct justice, and are biased against me in favor of state and local government and their attorneys and state judges.

"I declare(or certify, verify, or state) under penalty of perjury that the foregoing is true and correct."

Executed on June 25, 2004 _____
Gerald Bush

CERTIFICATION OF PETITIONER

Petitioner states and affirms that this motion for rehearing complies with the intent of Rule 44(2) and is presented in good faith and not presented to delay and is consistent with this Court's decisions on rehearing.

(Fn Petitioners are seeking to enforce their civil rights. They have no reason for or advantage in delay, since the case was dismissed at the district court and they are just trying to get back to square one. Petitioners are still only seeking "Justice".)

June 25, 2004 _____
Gerald Bush